25.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~428.~~ 213

THE UNITED STATES, APPELLANTS,

vs.

LORENZO D. LA RIEU.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 19, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 428.

THE UNITED STATES, APPELLANTS,

vs.

LORENZO D. LA RIEU.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the United States Court of Claims.

LORENZO D. LA RIEU
vs.
THE UNITED STATES. } No. 3575.

To the honorable the Court of Claims of the United States:

The petition of Lorenzo D. La Rieu, of the city of Washington, in the District of Columbia, respectfully represents that he is and has been a watchman in the public grounds in the city of Washington, D. C., appointed in conformity with law by the Commissioner of Public Buildings, by which appointment he became an employé in the office of the said Commissioner of Public Buildings, and that the salary regularly appropriated annually by law has been and is ten hundred and eighty dollars, and the same was regularly paid to said Lorenzo D. La Rieu by said Commissioner of Public Buildings.

Your petitioner further represents that the Congress of the United States did, at the second session of the Thirty-ninth Congress, pass a joint resolution giving additional compensation to certain employés in the civil service of the United States, which joint resolution was
2 approved and signed by the President of the United States on the 28th day of February, 1867, and is in the words following, viz:

"That there shall be allowed and paid out of any money in the Treasury, not otherwise appropriated, to the following-described persons, now employed in the civil service of the United States, at Washington, as follows: To civil officers, and temporary and all other clerks, messengers, and watchmen, including enlisted men detailed as such, to be computed upon the gross amount of compensation received by them, and employés, male and female, in the Executive Mansion, and in any of the following-named Departments, or in any Bureau or division thereof, to wit: State, Treasury, War, Navy, Interior, Post Office, Att'y Gen'l's, Agricultural, and including civil officers and temporary and all other clerks and employés, male and female, in the office of the Coast Survey, Naval Observatory, Navy Yard, Arsenal, Paymaster Gen'l, including the division of referred claims, Commissary General of Prisoners, Bureau of Refugees, Freedmen, and Abandoned Lands, Quartermaster's, Capitol and Treasury Extension, City Post Office, and Commissioner of Public Buildings; to the photographer of the Treasury Department, to the superintendent of meters, and to lamp-lighters under the Commissioner of Public
3 Buildings, an additional compensation of twenty per centum on their respective salaries as fixed by law, or, where no salary is fixed by law upon their pay, respectively, for one year from and after the 30th day of June, 1866; but when any of said persons is or shall be only entitled to receive salary or pay for a part of said year, the said twenty per centum shall be computed on the amount such person is so entitled to receive for services in any or all of said Departments or offices within said year: *Provided*, That the above-named additional compensation to the employées of the Patent Office shall be paid out of the funds of said office: *Provided further*, That this resolution shall not apply to persons whose salaries as fixed by law exceed three thousand five hundred dollars per annum."

And your petitioner avers that, being an employé in the office of the Commissioner of Public Buildings, he verily believed that he was entitled to the additional compensation of twenty per centum on his salary of ten hundred and eighty dollars per annum as fixed by law.

That, upon application to the proper officer of the Treasury, having the power to decide upon his application, to wit, the First Comptroller thereof, he decided that your petitioner was not entitled thereto.
4 His decision being at that time verbal, your petitioner caused application to be again made formally, in writing, as well for himself as for others, to which application the First Comptroller replied as follows:

"TREASURY DEPARTMENT,
"COMPTROLLER'S OFFICE, *April 23rd*, 1867.

"SIR: I have examined the questions presented by you in relation to the claim of twenty per cent. additional compensation made by sundry persons formerly employed under the Commissioner of Public Buildings, and have come to the conclusion that the persons named are not within the provisions of the joint resolution of February 28th, 1867.

"Very respectfully,

"R. W. TAYLOR, *Comptroller.*

"Major B. B. FRENCH, *Washington.*"

Your petitioner therefore makes application to this honorable court for that justice which he thinks has been denied to him by said Comptroller of the Treasury, no reason having been given for such denial. He therefore prays judgment against the United States for two hundred and sixteen dollars, the amount of said twenty per centum on
5 his salary of ten hundred and eighty dollars for the fiscal year ending June 30th, 1867.

Your petitioner is the sole owner of this claim, and no other person has any interest in the same. He has, at all times borne true allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against it.

LORENZO L. LA RIEU.

JA'S DANIELS,
Att'y for Plaintiff.

DISTRICT OF COLUMBIA,
County of Washington:

On the 20th day of August, 1868, Lorenzo D. La Rieu, the petitioner, appeared before me and made oath that he is the sole owner of the claim set forth in his petition, and that he has never made any assignment or transfer of the same, or any part thereof, or interest therein stated, and that he believes the facts as stated in his petition are true.

Witness my hand and seal on the day and year above written.

[L. S.] THO'S J. MYERS,
Notary Public.

(Indorsed:) 3575. Lorenzo D. La Rieu vs. The United States.

6 In the Court of Claims of the United States.

LORENZO D. LA RIEU
vs.
THE UNITED STATES. } No. 3575.

Special plea for defendants.

And the said defendants, by their Attorney General, now come, and,

by leave of court, (as expressed in Rule IX,) say that the said claimant ought not further to maintain his said action, because—

1. While the claim presented in this petition is such as is ordinarily settled in an Executive Department, the petition does not set forth the decision thereon of the proper Department of the Government to which application was (as is alleged) made for the payment of the claim. (Rule II.)

2. The petition does not set forth a full statement of the action, on the claim therein presented, by a Department of the Government, as required by section 1 of the act of February 4, 1855.

3. The evidence in the case does not show that any such application has ever been made to any Department of the Government, whether with or without success, or any action whatever thereon, without which action this court has no lawful jurisdiction in this case.

And the said defendants pray judgment, &c.

THOMAS H. TALBOT,
Assistant Attorney General.

7 In the Court of Claims.

LORENZO D. LA RIEU
vs.
THE UNITED STATES. } 3575.

And now, to wit, 23d of May, A. D. 1870, the court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Lorenzo D. La Rieu have and recover of and from the United States the sum of two hundred and sixteen dollars no cents ($216 00.)

By the court:

A true copy of record.

8 Court of Claims, Dec. term, 1869.

LORENZO D. LA RIEU
vs.
THE UNITED STATES. } 3575.

The defendants, by their Attorney General, come and ask the allowance of an appeal of the case to the Supreme Court of the United States, on the ground that the judgment will affect a class of cases.

THOMAS H. TALBOT,
Ass't Att'y Gen'l.

Filed in clerk's office Aug. 17, 1870.

AT CHAMBERS.

Ordered, That the appeal prayed in this case be allowed.
Sept. 26, 1870.

JOSEPH CASEY,
Ch. Justice.

9 In the Court of Claims of the U. S., December term, 1869.

I, Edward G. Loring, presiding judge of the Court of Claims, do here-

by certify that the judgment rendered in the case of L. D. La Rieu vs. The United States, on the 23d day of May, 1870, affects a class of cases, and furnishes a precedent for the future action of an Executive Department in the adjustment of such class of cases.

EDW. G. LORING.

10 In the United States Court of Claims.

L. D. La Rieu
vs.
The United States. } No. 3575.

The finding of facts and the conclusions of law on said facts on which the court founded its opinion.

This cause coming on to be heard the 23d day of May, 1870, before all of the judges of the Court of Claims, the said court finds as matters of fact:

That the claimant was an employé in the office of the Commissioner of Public Buildings as watchman at the Smithsonian grounds, and was in office from the 28th day of July, 1866, until the 30th day of June, 1867, at a salary of $1,080 per year.

That application was made to the First Comptroller of the Treasury to be allowed the additional compensation of 20 per centum on his salary, under the joint resolution of Congress, approved February 28th, 1867, and that such compensation was refused.

That he was loyal to the Government of the United States, and that he took the oath of allegiance, commonly called the test oath.

11 The claimant was not employed within the [four walls of the] office of the Commissioner of Public Buildings.

By the court.

The defendants also requested the court to make the following findings, which request was refused:

L. D. La Rieu was watchman on the Smithsonian grounds from July 28th, 1866, to June 30th, 1867. (See testimony of B. B. French & J. W. Westfall, and 14 St. L., 365.)

His pay was at the rate of $825 a year. (See 14 St. L., 374.)

On March 2ond, 1867, the office of Commissioner of Public Buildings was abolished. (14 St. L., 466.)

The claimant never made application for the settlement and payment of his claim, either before or during this litigation, to any Department of the Government in which such claims are ordinarily settled.

(Indorsed:) 3575. L. D. La Rieu vs. The United States.

12 In the Court of Claims.

Lorenzo D. La Rieu
vs.
The United States. } No. 3575.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Att'y General for defendants for the allow-

ance of an appeal, as filed in the clerk's office Aug. 17, 1870, and of the order of Chief Justice Casey allowing the same; of the certificate of the presiding judge; of the findings of fact on which the court founded its judgment; and of the requested findings by the defendants, which request was denied by the court.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 17th day of December, 1870.

[SEAL.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 428. The United States, appellants, vs. Lorenzo D. La Rieu. Court of Claims. Filed 19th December, 1870.